

New Castle City Board of Adjustment Meeting Minutes
Meeting via Zoom
September 23, 2020 – 6:30 p.m.
City of New Castle

Members Present: Mayor Michael J. Quaranta
Daniel R. Losco, Esq., City Solicitor
David J. Athey, City Engineer

Also Present: Jeff Bergstrom, City Building Official & Fire Marshall

Mayor Quaranta convened the meeting at 6:33 pm and introduced the Board members. Mr. Losco read the application.

An application has been filed by John Di Mondì Enterprises, 300 West Seventh Street, New Castle, DE 19720 for a property located at, 300 West Seventh Street, New Castle, Delaware, parcel number 21-014.00-396, seeking a special exception to permit the expansion of an existing self-service storage facility use in the Downtown Gateway - DG zoning district.

Mr. Losco noted that the meeting was properly posted on September 2, 2020, and published in the New Castle Weekly.

Mayor Quaranta asked if the Applicant were present or had representation. Ms. Burgmuller attempted to connect the Applicant via telephone.

Mayor Quaranta asked Mr. Losco for clarification of the process in the event the Applicant or his Representative was unable to join the meeting. Mr. Losco opined that the Application would go forward, stating the Board can accept the Applicant's written submission; however, he added that it would be problematic if the Applicant is not present to respond to questions from the Board.

Mr. Athey noted he felt the meeting could proceed as the Application seemed routine; however, if the issue became complex he would be in favor of postponing the hearing.

Mr. DiMondi joined the meeting at 6:37 pm.

Mr. DiMondi stated that he had nothing further to add to his submission but would be happy to answer questions.

Mr. Losco stated that Mr. DiMondi's written submission did not address points raised in §230-21.1 D(4), specifically,

“In an application to expand an existing self-service storage facility use, the Board of Adjustment shall give primary consideration to the mandatory provision of visual screening in the form of walls or fencing in combination with suitable landscaping to reasonably shield said use and the public right-of-way and property lines.”

Mr. DiMondi explained that the two new buildings are shielded by existing warehouses and they would not be visible. Mr. Losco reiterated that the Code requires “visual screening” in the form of fencing or suitable landscaping to grant the special exception being sought. Mr. DiMondi added that behind the proposed buildings is the railroad track, and in front is a warehouse. Mr. Losco stated that the Code applies to the site as a whole and made reference to Board Decisions from 2014 and 2019 that spoke to the installation of “4’ high plantings, evergreen in nature” at the site. Mr. DiMondi explained that he installed large flower pots in front of the decorative iron fencing. Mr. Losco added that there are only three flower pots that each contains dead flowers. Mr. DiMondi explained that the front of the property had been planted with 3’-4’ high wild flowers; however either the City or DeIDOT sprayed the area and killed all the flowers.

Mr. Losco stated that in 2019 Mr. DiMondi agreed to a “landscape screen in the form of evergreen plantings on 5’ centers, the height of which should be a minimum of 4’ high including the height any pots” and that does not exist at the present time. A heated discussion ensued during which Mr. DiMondi expressed his feeling that he has been beleaguered during past Board of Adjustment hearings.

Mr. Athey noted that the landscaping was an issue at previous Board hearings and asked Mr. Losco if his understanding of Mr. Losco’s point was correct. Mr. Losco clarified his point and stated that Mr. DiMondi did not live up to the prior Decisions, which was for 4’ high plantings on 5’ centers. The terms of the conditions set forth in the 2019 Decision were debated by Mr. Losco and Mr. DiMondi, and Mr. Losco quoted from the 2019 Decision again for clarification. Mr. Losco stated that he would not vote on what Mr. DiMondi has done in the past; however, he would condition the grant of any building permit under the current Application on Mr. DiMondi complying with the Code and the Board’s conditions if any are granted.

Mr. DiMondi noted that the proposed units do not require screening because they sit 8’ below street level. In discussion, Mr. Athey stated the floor elevations on the site plan do not correlate to the site of the proposed units being 8’ below street level and Mr. DiMondi explained that the proposed units have railroad tracks in the back, a 50’ high warehouse on the 7th Street side, and an 8’ block wall on the South Street side that would screen the site from the public.

During discussion of Mr. DiMondi’s compliance with conditions in the 2019 Decision Mr. Losco explained the fact that Mr. DiMondi did not follow the conditions previously imposed was not the issue. Mr. Losco stated it is a predicate in the Code that in order to grant the special exception appropriate screening must be provided along the street and that has not happened with the prior conditions; and added that Mr. DiMondi’s Application does not offer anything in the way of landscape screening. Mr. Losco opined that the existing screening is inadequate for the site and reiterated that it is the Board’s paramount consideration to consider the mandatory screening.

Mr. DiMondi again expressed his feeling that he has been unjustly treated in his past dealings with the Board of Adjustment.

In response to a request from Mr. Athey, Mr. Losco read the Motion from the 2019 hearing that was approved by the Board. Mr. Athey opined that based on the size of the area, there should be more than three planting pots along the front of the property and Mr. Bergstrom stated that there are currently only three pots.

Mayor Quaranta confirmed the applicable portion of the Code was adopted in 2013 and has not changed since the 2019 Decision. He noted that making the DG District more attractive is a goal of the Code adopted in 2013. The Mayor noted that the Board recently handed down a Decision on an Application submitted by the New Castle Sailing Club that included a condition of landscape screening in the same area.

The Mayor asked Mr. Bergstrom to comment in his capacity as Building Official. Mr. Bergstrom stated that the Board conditioned approval of the Sailing Club's Application on a landscape plan submitted to and approved by him as Building Official. In compliance with the Board's 2019 Decision, Mr. DiMondi added quite a few planting pots. Mr. Bergstrom opined that the landscaping technique in the 2019 Decision was not as well thought out as it might have been because of the maintenance and life expectancy of evergreens planted in pots. He added that through attrition the number of pots decreased to the three remaining pots. He opined that the 2019 Decision did not specify that the landscape screen was to be maintained in perpetuity.

Mayor Quaranta asked Mr. Bergstrom if he had any knowledge that the City used any form of herbicide on the plantings at the site. Mr. Bergstrom stated the City did not spray the plants. He noted that it is a DeIDOT street and opined that they sprayed the plants. He added that the wild flowers in the front of the property were very attractive before they were sprayed.

Mayor Quaranta opened the meeting to public comment.

Phil Gross

- Mr. Gross suggested the Board should consider the Moore's Lane storage units that have a fence but no landscaping.
- Mr. Gross suggested that approval of the special exception could be conditioned on the Applicant being given an opportunity to submit a new landscape plan that the Board would approve prior to construction of the proposed storage units. Mayor Quaranta noted that any proposal to include landscaping on the site should have been made in the Application and the Code is specific in the requisites for granting a special exception.
- Mr. Gross noted that there is not much sidewalk at the front of the property and no grass to do plantings.
- Mr. Gross concurred with Mr. DiMondi's explanation of the existing screening of the site of the proposed units and asked if the Board was uncomfortable granting the special exception because of the non-compliance of past conditions. Mayor Quaranta explained that as Mr. Losco previously stated, the Code is very clear on the conditions for granting

a special exception and Mr. DiMondi's submission is void of any plan to address landscaping.

- Mr. Gross suggested that the Board inspect the site and reiterated that the site is totally hidden from public view and stated that he supports the Application.
- Mr. Gross suggested the Board discuss appropriate options to evergreen trees.

Mayor Quaranta reiterated that the Code is clear that the Applicant is required to address the landscaping issue and the Application cannot be deliberated without considering that requirement. The Mayor opined the burden is on the Applicant to propose solutions and make certain the Application is compliant with the all Code, Regulatory, and Policy requirements.

There being no further public comment, the Mayor called for a Motion to move to the Business Meeting.

A Motion to close the hearing and move to the Business Meeting was made by Mr. Athey, seconded by Mr. Losco and unanimously carried.

Mr. Athey noted that the reason the Board settled on potted plants was that Mr. DiMondi made a compelling argument that to do otherwise would be very expensive and there was no other reasonable way to address landscaping.

Mr. Athey asked Mr. Bergstrom to opine further on the Board's 2019 Decision. Mr. Bergstrom stated that from his perspective in the Sailing Club Decision the Board's expectation of landscaping was well-defined; however, the 2019 Decision was very nebulous and planted pots initially satisfied the condition, but it was not maintained. He suggested that if the Board wants to condition an approval of the special exception, it be conditioned on a landscape plan being submitted by a Landscape Architect.

Mayor Quaranta asked Mr. Losco to explain the options before the Board relative to the Application. Mr. Losco stated the Board can entertain a Motion to continue the hearing to give the Applicant time to submit a landscape plan or other documentation. Another option is to decide the Application as submitted with or without conditions.

Mr. Athey stated that the proposed new storage units are virtually not visible from the street; however he is not comfortable recommending an approval knowing the intent of the DG District and the aesthetic requirements in the Code. He added that the conditions in the 2019 Decision clearly did not work for the long-term. He opined that an approval could be conditioned on a requirement that a professional submit a plan for screening that would meet the intent of the DG District.

Mayor Quaranta made a Motion to continue the hearing for 60 days and ask that the City communicate to the Applicant outlining the Code section that is not addressed in the Application and invite him to amend his Application if he so chooses.

Mr. Losco asked for and was granted the Mayor's permission to rephrase the Motion to: A Motion to continue the hearing for up to 60 days to give the applicant time to submit a professional landscape plan to address the Code Section requirements. The Mayor approved Mr. Losco's wording and made the Motion.

During discussion, amendments to the Motion were recommended, including:

- "Professional" should be changed to "professional Landscape Architect" or "Professional Arborist". After discussion, it was noted the Code states screening should be "reasonable" and it was agreed that the landscape plan should be submitted by a licensed Landscape Architect.
- Plantings should be evergreen based, similar to the direction and standards required of the Sailing Club. During discussion it was noted that the Sailing Club landscape plan was reviewed by the City Arborist and acceptable plantings were agreed upon.
- The plan should be sustainable. It was noted that the original screening failed because it was not sustainable. Mayor Quaranta recommended that the Code should also reflect sustainability.

The Motion was amended to reflect recommendations.

Mayor Quaranta made a Motion to continue the hearing for a period of up to 60 days to invite the applicant to submit a sustainable evergreen-based landscape plan prepared by a licensed Landscape Architect consistent with the terms of §230-21-1 D (4) of the City Code.

During discussion Mr. Athey noted that the area where landscaping was requested for the Sailing Club was a grass surface whereby Mr. DiMondi's front is all concrete. Other options for screening were suggested including a raised planting bed behind the fence or surface planters.

It was noted that the point of the DG District is to provide a walkable visual appeal as one enters the City. Mr. Losco stated the section of the Code was provided as a compromise to allow Mr. DiMondi to continue with and expand his self-service storage facility that is otherwise not allowed in the DG District. Mr. Athey stated the common goal is to improve the aesthetics of the location, and expressed his hope that if it can be done with surface treatment at minimal expense Mr. DiMondi will agree to incur that expense. It was also noted that a condition should be set that has a reasonable expectation of being met.

There being no further discussion, Mr. Athey seconded the Motion.

On vote:

Mr. Losco stated he is torn because the Applicant came unprepared. He stated it is not his intention to punish the Applicant; however, he expects Code compliance. In the spirit of trying to give the Applicant every opportunity to comply with the Code, Mr. Losco stated he would vote in favor of the Motion.

Mr. Athey stated he would vote in favor of the Motion. He noted that as the Code allows, the Board is empowered to establish reasonable conditions for granting a special exception and feels the Board has struck a good balance and discussed the issue adequately, and the conditions will make it reasonably consistent with the Board Decision made for the Sailing Club.

It was agreed that the Decision letter should be submitted to the Applicant by either the Building Official or the City Administrator.

Mayor Quaranta stated he would vote in favor of the Motion to give the Applicant the opportunity to reconsider and look at the existing Code and amend the Application for Board review. He added that the Applicant is under no obligation to respond or incur any expense if he does not wish to address the existing requirements in law. He added that the Applicant is not being advantaged or disadvantaged in the way any other Applicant would be treated. He expressed his expectation that the submitted plan would support the goal of improving the DG District and would be akin to what the Board required of the Sailing Club.

The Motion carried with a 3-0 vote.

There being no further business to discuss, Mayor Quaranta called for a Motion to Adjourn.

Mr. Athey made a Motion to adjourn the meeting. The Motion was seconded by Mr. Losco. On vote, the Motion was unanimously approved and the meeting adjourned at 7.55 p.m.

Kathy Weirich
Stenographer